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SUPREME COURT OF THE UNITED STATES.

No. 152.

SAMUEL MARSH, WM. E. LEE, AND EDWARD C. DELEVAN, PLAINTIFFS IN ERROR.

vs.

THOMAS F. REDDICK'S HEIRS.

IN ERROR TO THE SUPREME COURT OF IOWA.

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UNITED STATES OF AMERICA,
Territory of Iowa, ss:

Pleas held before the honorable Charles Mason, chief justice, Joseph Williams and Thomas S. Wilson, associate justices, composing the supreme court for Iowa Territory, at Iowa city in said territory, on the 26th day of January, A. D. 1846.

SAMUEL MARSH, William E. Lee, and Edward C. Delevan, plaintiffs in error,
against
EDWARD BROOKS and Virginia C., his wife, formerly Virginia C. Reddick, Charles P. Billou and Frances E., his wife, formerly Frances E. Reddick, Walter J. Reddick and Dabney C. Reddick, by Eliza M. Reddick, their guardian, heirs at law of Thomas F. Reddick, deceased, defendants in error.

Writ of error to the judgment of the district court of Henry county.

Be it remembered, that heretofore, to wit, on the 31st day of October, A. D. 1843, the said plaintiffs in error, by Hugh T. Reid, esqr., their attorney, sued out of the clerk's office of the supreme court, for the territory aforesaid, the following writ of error, to wit:

Writ of error.

UNITED STATES OF AMERICA,
Territory of Iowa, ss:

To the honorable Charles Mason, judge of the district court, for the county of Henry, greeting:

Whereas, at a district court, begun and held at the court house in and for the county of Henry, on the 1st Monday of September, in the year of our Lord eighteen hundred and forty-three, Reddick's heirs, by the judgment of said court, recovered against *a* certain Marsh, Lee, and Delevan, a certain judgment in a suit brought to recover the possession of real property, on a writ of right, as *his* costs and charges by *him* about *his* suit in that behalf laid out and expended, whereof the said Marsh, Lee, and Delevan, [are] convict as it is said; and because, in the record and proceedings, as also in the rendition of the said judgment, a manifest error hath happened, to the great damage of the said Marsh, Lee, and Delevan, as in his complaint hath been stated.

Therefore, you are hereby commanded, that if the judgment aforesaid be therein given, then, under your seal, you do, distinctly and

openly, send the record and proceedings aforesaid, with all things thereunto relating, to the supreme court for the territory aforesaid, to be held at *the* Iowa city, on the first Monday of January next, together with this writ; that the record and proceedings aforesaid being inspected, the said supreme court may further cause to be done therein, for the correcting of that error, what of right, and according to the laws and customs of the land may be done.

Witness the honorable Charles Mason, chief justice of the supreme court, this 31st day of October, eighteen hundred and forty-three.

[SEAL.]

GEO. S. HAMPTON,
Clerk of the Sup. court.

And afterwards, to wit, on the 1st day of January, A. D. 1844, in answer to the said writ of error, the following transcript was filed in the clerk's office of the said supreme court, to wit:

Transcript from the district court.

TERRITORY OF IOWA, *Henry county, sct:*

At a district court, begun and held in and for said county, on the 1st Monday (the 4th day) of September, A. D. 1843; present the honorable Charles Mason, judge.

Among other, were the following proceedings, to wit:

EDWARD BROOKS and Virginia C., his wife, formerly Virginia C. Reddick, Charles P. Billou and Frances E., his wife, formerly Frances E. Reddick, Walter J. Reddick and Dabney C. Reddick, by Eliza M. Reddick, their guardian, heirs at law of Thomas F. Reddick, deceased,

vs.

SAMUEL MARSH, William E. Lee, and Edward C. Delevan, substituted for David W. Kilbourn.

Action of right on change of venue from Lee county.

Be it remembered, that in this case the following writ, declaration, plea, agreement, and affidavit, filed in Lee county, and entries in term in Lee county, also agreement of counsel, three bills of exceptions filed in Henry county, and entries in term in said county, appear of record, to wit:

Writ of right.

TERRITORY OF IOWA, *Lee county, ss:*

The United States of America, to the sheriff of said county, greeting:

You are hereby commanded to summon David W. Kilbourn, to

appear before the district court of the county aforesaid, on the first day of the next term thereof, at a court to be begun and holden at the court house, in the town of Fort Madison, on the fourth Monday in the month of August next, to answer unto Edward Brooks and Virginia C. Brooks, his wife, Charles P. Billou and Frances E. Billou, his wife, Walter J. Reddick and Dabney C. Reddick, co-heirs of Thomas F. Reddick, in an action of right, for certain land with the appurtenances in said county, which the said Edward Brooks and Virginia C. Brooks, his wife, Charles P. Billou and his wife Frances E. Billou, Walter J. Reddick and Dabney C. Reddick, co-heirs, &c., claim to be their right in fee simple, and of which they complain that the said David W. Kilbourn wrongfully withholds the possession. Hereof fail not, and have you then and there this writ.

Witness the honorable Charles Mason, judge of the first judicial district of said territory, and sealed with the temporary seal of said court, this 10th day of July, A. D. 1839. [SEAL.]

JOHN H. LINES,
Clerk, district court.

Sheriff's return.

Served the within summons, by delivering to the defendant a true and attested copy of this writ of summons, July 10th, 1839.

B. W. GILLOCK, *Sheriff.*

Declaration.

IOWA TERRITORY, *Lee county, ss:*

District court, August term, 1839.

District court for said county, dated this 10th day of July, 1839.

The co-heirs of Thomas F. Reddick, deceased, to wit, Edward Brooks and Virginia C. Brooks, his wife, in right of the said Virginia C. Brooks, daughter of the said Thomas F. Reddick, deceased, Charles P. Billou and Frances E. Billou, his wife, in right of the said Frances E. Billou, daughter of the said Thomas F. Reddick, deceased, Walter J. Reddick, an infant under the age of twenty-one years, son of the said Thomas F. Reddick, deceased, by his guardian, Eliza M. Reddick, and Dabney C. Reddick, an infant under twenty-one years, son of the said Thomas F. Reddick, deceased, by Eliza M. Reddick, his guardian, claim against David W. Kilbourn a tract of land with the appurtenances, lying in the county aforesaid, and described as follows, to wit: containing about four acres, bounded on the north eastern side by a certain fence, running parallel with and on the bank of the Mississippi river; on the south eastern side by the building which is known as the commissary's store-house, and by a fence; bounded on the south western side by a fence 27 rods long; and on the north western side by a fence and by a large stable, which was formerly occupied by the United States dragoons, said stable being on said tract of land; the

above mentioned commissary's house is also on said tract of land; there is also a dwelling within said enclosure, which is now occupied by said Kilbourn as his residence; said tract of land is situated in the town of Montrose, and known as the tract of land on which the said Kilbourn now lives.

And hereupon, the said co-heirs of the said Thomas F. Reddick, deceased, to wit, Edward Brooks and Virginia C. Brooks, his wife, in right of the said Virginia C. Brooks, daughter of the said Thomas F. Reddick, deceased, Charles P. Billou and Frances E. Billou, his wife, in right of the said Frances E. Billou, daughter of the said Thomas F. Reddick, deceased, Walter J. Reddick, an infant under the age of twenty-one years, son of the said Thomas F. Reddick, deceased, by Eliza M. Reddick, his guardian, and Dabney C. Reddick, an infant under the age of twenty-one years, son of the said Thomas F. Reddick, deceased, by Eliza M. Reddick, his guardian, say, that they have right to the immediate possession of said property, and to the ownership thereof, in fee simple, and also to damages for its detention, and offer to prove that such is their right.

A. RICH, *Atty. for plffs.*

Endorsed: Filed July 10th, 1839.

JOHN H. LINES, *Clerk district court.*

Pleas.

TERRITORY OF IOWA, *Lee county, sct:*

In the district court for said county, August 30th, 1839.

DAVID W. KILBOURN, vs. REDDICK'S HEIRS.

Action of Right.

David W. Kilbourn denies the right of the plaintiffs to the tract of land, with the appurtenances, and damages for the detention thereof, as set forth in their declaration, or to any part thereof; and hereupon he prays a jury to determine the truth of his plea.

ENO & REID, ED. JOHNSTONE, *Attys. for deft.*

Endorsed: Filed 30th August, 1839.

JOHN H. LINES, *Clerk.*

In the district court of Lee county, of August term, 1839.

Agreement of Counsel.

REDDICK'S HEIRS, ads. DAVID W. KILBOURN. No. 55.

Action of Right.

The above cause is continued by consent of parties until the next

regular term of this court; and it is hereby admitted by the counsel for the defendant, that Edward Brooks and Virginia C., his wife, formerly Virginia C. Reddick, Charles P. Billou and Frances E., his wife, formerly Frances E. Reddick, Walter J. Reddick and Dabney C. Reddick, are the heirs of Thomas F. Reddick, deceased, and that Eliza M. Reddick is the legal guardian of Walter J. Reddick and Dabney C. Reddick, aforesaid.

A. RICH, *Attorney for plaintiff.*
ENO & REID, ED. JOHNSTONE,
Attorneys for defendant.

Filed 30th August, 1839.

JOHN H. LINES, *Clerk.*

Entry in term in Lee county, 9th May, 1840.

New defendants made.

REDDICK'S HEIRS, }
vs.
DAVID W. KILBOURN. }

Action of Right.

On motion of Reid and Johnston, attorneys for the defendants, for reasons assigned, which appear satisfactory, it is ordered by this court, that Samuel Marsh, William E. Lee, and Edward C. Delevan, be made defendants in the place of non-defendants Anson M. Bissell, Calvin Beebe, Henry S. Austin, John Shaw, John Taylor, and Brigham Young; and by consent of parties it is ordered that this suit be continued generally.

Continued.

Afterwards, to wit, at the October term, 1840, of said court, this suit was continued generally.

Continued.

Afterwards, to wit, at the April term, 1841, of said court, this cause was continued generally.

Continued.

Afterwards, to wit, at the October term, 1841, of said court, this suit was continued generally.

Continued.

Afterwards, to wit, at the April term, 1842, of said court, the following proceedings were had, to wit:

Venue changed to Henry county.

REDDICK'S HEIRS,
vs.
MARSH, LEE, AND DELEVAN.

Action of Right.

On this day came H. T. Reid, attorney for said defendants, and filed the affidavit of D. W. Kilbourn, praying for change of venue in these suits, five in number, which [was] granted to the county of Henry, in said territory.

Affidavit.

TERRITORY OF IOWA, *Lee county, ss:*

District court, April term, A. D. 1842.

REDDICK'S HEIRS,
vs.
SAMUEL MARSH, William E. Lee, and Edward C. Delevan.

Action of Right, five causes.

David W. Kilbourn, being duly sworn, upon his oath deposes and says, that the above named defendants are non-residents of this territory, and that he, the said David W. Kilbourn, is the agent of said defendants in this territory; and the said David W. Kilbourn further deposes and says, that he verily believes that the said defendants cannot have a fair trial in said county of Lee in said cases, for reason that the inhabitants of said county are prejudiced, as said affiant verily believes, against said defendants; wherefore, the said defendants pray, that the court may grant a change of venue in said cases, to the county of Henry, the nearest county where said causes complained of do not exist.

DAVID W. KILBOURN.

Subscribed and sworn to before me, this 4th day of May 1842.

JOEL C. WALKER, *Clerk.*

Endorsed: Filed May 4th, 1842.

J. C. WALKER, *Clerk.*

Proceedings in Henry county, entry in term, Sept. 6th, 1842.

REDDICK'S HEIRS,
vs.
MARSH, LEE, AND DELEVAN.

Action of Right, in two cases.

Rule vs. Clerk of Lee county.

On motion of defendants, by Reid, their attorney, rule is ordered to issue to the clerk of the district court of Lee county, to send up the original papers in both these cases.

Agreement filed.

Entry in term, September 8th, 1842.

REDDICK'S HEIRS,
vs.
MARSH, LEE, AND DELEVAN.

Action of Right, two causes.

And now came the parties, and filed an agreement in writing, by which these cases are continued, and by which the trial of one case is to determine these and several others, between the parties.

Agreement.

REDDICK'S HEIRS,
vs.
MARSH, LEE, AND DELEVAN.

Dis. court Hen. Co., Sept. T. 1842, Action of Right.

Whereas, there are now pending in the district court for Henry county five several actions of right, between the above named parties, which were removed from the county of Lee, by change of venue, it is agreed, between Alfred Rich and Henry W. Starr, attorneys for plaintiffs, and Hugh T. Reid, attorney for defendants, that the suit in which the above defendants were substituted for David W. Kilbourn, shall be tried, and should the jury agree upon a verdict, that all the above suits remaining untried shall abide the event of said trial, and the court shall proceed to record the verdicts and judgments in each accordingly; and it is further agreed, that if the verdict shall be for plaintiffs, such damages as the attorneys shall agree upon shall be embodied in said verdicts and judgments; and if no agreement shall be entered into as to the amount of damages in each case, on request of plaintiffs or their attorneys, a jury shall be empannelled to find the amount of damages, and such finding of the jury in each case shall be embodied in the verdicts and judgments above agreed to be entered. It is further agreed, that if said suit, so tried, shall be taken to a higher court or courts, that *that* the decision there made shall control the rights of the parties in the other suits; provided, that security shall be given in all alike.

September 8th, 1842.

ALFRED RICH,
HENRY W. STARR,
H. T. REID.

Endorsed: Filed 8th September, 1842.

E. KILLPATRICK, *Clerk*.

Entry in term, September 7th, 1843.

REDDICK'S HEIRS,
vs.
MARSH, LEE, AND DELEVAN.

Action of Right.

And now came the parties by their attorneys, and issue being joined, thereupon came a jury, to wit:

Jury.

Myron Kilbone, Allen W. Johnson, Ludwell P. Fariss, John G. Kitch, Evan Jay, William H. Cook, John W. Payne, Samuel M. Heaton, Ward Bradford, George J. Sharp, and Benjamin Case, who being elected, tried, and sworn, well and truly to try the issue joined, before the testimony was concluded, the court adjourned.

Entry in term, 8th September, 1843.

Action of Right.—*Trial resumed.*

REDDICK'S HEIRS,
vs.
MARSH, LEE, AND DELEVAN.

And now came the parties, and the trial of this case was resumed, the evidence closed, but before the argument of counsel was concluded, the court adjourned.

Entry in term, 9th September, 1843.

EDWARD BROOKS and Virginia C., his wife, formerly Virginia C. Reddick, Charles P. Billou and Frances E., his wife, formerly Frances E. Reddick, Walter J. Reddick and Dabney C. Reddick, by Eliza M. Reddick, their guardian, heirs at law of Thomas F. Reddick, deceased,
vs.
SAMUEL MARSH, William E. Lee, and Edward C. Delevan, substituted for David W. Kilbourn.

Action of Right.—*Verdict and judgment.*

And now came the parties by their attorneys, and the argument of counsel in this case was resumed and concluded, and the case submitted to the jury under the instructions of the court; the jury retired, and afterwards returned into court, and on their oath do say, *we, the jury, do find for the plaintiffs.* Therefore, it is considered and adjudged by the court, that the plaintiffs recover the land described in their declaration and possession thereof; also, their costs expended in the prosecution of this suit; and that a writ of possession do issue at request of plaintiffs,

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directed to the sheriff of Lee county, to deliver possession of said land described in the declaration according to law; writ of error may be taken and execution of writ superseded, by giving bond in the sum of one hundred dollars, with David W. Kilbourn, security.

Bill of exceptions.

In the trial of the above cause, the plaintiffs offered in evidence the following patent:

Patent to Thomas F. Reddick.

The United States of America, to all to whom these presents shall come, greeting:

Know ye, that Thomas F. Reddick, assignee of the estate of Joseph Robidoux, assignee of Louis Honore Tesson, has deposited in the General Land Office a certificate numbered one thousand one hundred and fifty-seven, of the recorder of land titles at St. Louis, Missouri, whereby it appears, that in pursuance of the several acts of Congress, for the adjustment of titles and claims to lands, the said Thomas F. Reddick, assignee of the estate of Joseph Robidoux, assignee of Louis Honore Tesson, has been confirmed in his claim to a tract of land containing six hundred and forty acres, bounded and described as follows, to wit: beginning on the right and south westerly bank of the Mississippi, the most northern corner of this survey, at a stone sixteen inches wide, eighteen inches long, and two inches thick; from which an elm twenty-five inches in diameter bears south twenty-seven degrees and fifteen minutes east, distant two hundred and thirty-seven links; and an elm, twenty-five inches in diameter, bears south seventy-nine degrees and thirty minutes east, distant three hundred and thirty-six links; thence south thirty-four degrees west, being the north western boundary line of this survey; at four chains and forty-one links, the line between sections three and ten (twenty-four chains and thirty-one links, east of the quarter section corner;) at fourteen chains and fifty-nine links, leaves the inundated land and water; at seventeen chains and fifty links, a road bears nearly east and west, leading from the barracks lying within this survey, to Fort Madison; (from this point the old Pawnee village bears north sixty degrees west, about three hundred yards, afterwards inhabited by the Sac Indians about the year eighteen hundred and three. The Sac Indians also inhabited the place now occupied by the barracks on the east side of the creek, which is south sixty degrees east of this point, about three hundred yards distant;) at twenty-nine chains and twenty links a branch, thirty links wide, runs south; at forty-four chains leaves the brush and scattering timber, and enters Smooth prairie bearing east and west; at sixty-six chains and fifty links, an old Indian trace bears south sixty degrees west, and north sixty degrees east, eighty-eight chains and fifty links to a post, (the most western corner of this survey) in a mound, under which are deposited three stones, edges downwards, one of which is eight inches square and two inches thick, and the others about four inches square and two inches thick; thence,

south fifty-four degrees and fifteen minutes east, being the south western boundary line of this survey; at seventeen chains and twenty-three links, intersects the line between sections ten and fifteen, (thirty-two chains and sixty links east of the corner to sections nine, ten, fifteen, and sixteen;) at a post five inches in diameter, in a mound five feet square at bottom, and two feet deep, under which mound are deposited three small stones, each about four inches square, one of them three inches, and the others two inches thick; at thirty-one chains and fifty links, a path bears north and south, leading from St. Francisville to the aforesaid barracks at the head of the rapids of the Mississippi; at thirty-nine chains a narrow valley runs along the foot of the bluff; at fifty-three chains and fifty links, leaves the level prairie and enters the foot of the bluff; at sixty chains and fifty links, the top of the bluff; at seventy-six chains and thirty-three links, intersects the line between sections fourteen and fifteen, (five chains and twenty-eight links north of the quarter section corner on said line;) at a post five inches in diameter, two feet in the ground, from which an elm, (old marked,) ten inches in diameter, bears south fifty-two degrees east, distant one hundred and sixty links; and a burr oak, forked near the ground, thirty inches in diameter, bears south thirteen degrees east, distant two hundred and eleven links, eighty chains to a post eight inches in diameter, (the most southern corner of this survey, two feet in the ground, from which a burr oak, marked S. 14, T. 66 N., R. 5 W.) twenty-five inches in diameter, bears north eighty-one degrees east, distant seventy-eight links; and an elm, twenty-five inches in diameter, (marked with notch and blaze) bears north sixty-four degrees and thirty minutes west, distant one hundred and fifteen links; thence, north thirty-four degrees east, being the south eastern boundary line of this survey; at twenty-five chains and ninety-seven links, a black oak, twenty-four inches in diameter; leaves the prairie and enters scattering timber bearing east and west; at thirty-five chains and forty-one links a black oak, twenty-five inches in diameter; at forty-four chains and fourteen links, intersects the line between sections eleven and fourteen, (fifty-two chains and eighty-three links west of the corner to sections eleven, twelve, thirteen, and fourteen,) at a post five inches in diameter, from which an elm, twelve inches in diameter, bears south eighty-three degrees and thirty minutes east, distant forty-one links; and an elm, ten inches in diameter, bears north fifty-five degrees east, distant sixty-eight links; at sixty-two chains and seventy-eight links, a spring branch runs westwardly; at seventy-nine chains and seventy-eight links, the top of the bluff bears east and west; at eighty-five chains and seventy-eight links, the foot of the bluff bears east and west, eighty-eight chains and fifty links to a stone thirty inches long, sixteen inches wide, and eight inches thick, twelve inches in the ground, the edge in the direction of the line, being the most eastern corner of this survey, on the right and southerly bank of the Mississippi, from which stone an elm, ten inches in diameter, marked P. S., bears north fifty-three degrees west, distant forty-seven links; and a buckeye, sixteen inches in diameter, bears south three degrees and thirty minutes west,

distant thirty-four links; thence, up stream, along the right and south westerly bank of the Mississippi river, with the meanders thereof, north eighty-three degrees west, seven chains and ninety-one links; thence, north seventy-six degrees west, ten chains; at five chains, the old place of Lewis Honore Tesson's house, where the orchard is, bears south ten degrees west, distant about one hundred and fifty links; thence, north fifty-eight degrees west, three chains and fifty links; thence, north sixty-nine degrees west, five chains; at thirty links a branch twenty links wide runs from the southwest; thence, north eighty-five degrees west, at five chains and eighty links, the right bank of the mouth of a slough; thence, north sixty-five degrees west, at three chains and eighty-seven links, the left bank of the mouth of the slough, into which a small branch flows from the south, nine chains and seventy-four links, leaves timber extending southward; thence, north fifty-six degrees west, at seven chains, the garrison (the course of which is south seventy degrees west,) eleven chains, nearly opposite the centre of the garrison; thence, north thirty degrees west, sixteen chains and fifty links; at seven chains and twenty-five links a stable one hundred links to the left, which was formerly used by the soldiers of this station; thence, north fifty-three degrees west, six chains and fifty links, to the south side of the slough or overflowed land at the mouth of the creek; thence, north twelve degrees west, crossing the creek, eleven chains and eighty links, to the place of beginning; being in township sixty-six north, of range five west, of the fifth principal meridian, and being designated on the *connected* plat as survey numbered three thousand and ninety-five. There is, therefore, granted by the United States unto the said Thomas F. Reddick, assignee as aforesaid, and to his heirs, the tract of land above described. To have and to hold the said tract, with the appurtenances, unto the said Thomas F. Reddick, assignee as aforesaid, and to his heirs and assigns, forever.

In testimony whereof, I, Martin Van Buren, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the seventh day of February, in the year of our Lord one thousand eight hundred and thirty-nine, and of the independence of the United States the sixty-third.

[L. S.]

By the President,

MARTIN VAN BUREN,
By M. VAN BUREN, Jr., *Sec'y.*
H. M. GARLAND,
Recorder of the General Land Office.

Recorded vol. 9, pages 43, 44, 45, 46, and 47.

And further proved, that the lands claimed in this action, was included within the said patent, and the heirship of plaintiffs; and that defendant was in possession when writ was served; and thereupon the defendant offered the act of Congress of July 1st, 1836, entitled "an

act confirming to the legal representatives of Thomas F. Reddick, a tract of six hundred and forty acres of land," which act is as follows, to wit:

"(Sec. 1,) *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled—*

That all the right, title, claim, and interest, that the United States have in and unto a certain tract or parcel of land, containing six hundred and forty acres, situate on the left bank of the Mississippi river, about eighteen miles above the mouth of the Desmoines river, in fractional township numbered sixty-six, north of the base line of range No. five, west of the fifth principal meridian, in the territory recently attached to the Territory of Michigan, as will more fully appear on reference to the plat of survey, executed by Jenifer T. Sprigg, be, and the same is hereby, relinquished to the heirs of Thomas F. Reddick.

Provided, nevertheless, if said lands shall be taken by any older or better claim emanating from the United States, the Government will not be in anywise responsible for any remuneration to said heirs; *and provided, also,* that should said tract of land be included in any reservation heretofore made, under treaty with any Indian tribe, that the said heirs be, and they hereby are, authorized to locate the same quantity in legal subdivisions on any unappropriated land of the United States in said territory, subject to entry at private sale.

Approved 1st July, 1836.

Also the treaty of the 4th of August, 1824, ratified January 18th, 1825, between the United States and the Sac and Fox Indians, and the plat of the half breed Sac and Fox reservation, which treaty and plat are as follows, to wit:

Treaty between the United States and the Sac and Fox Indians.

"To perpetuate peace and friendship between the United States and the Soc and Fox tribes or nations of Indians, and to remove all future cause of dissensions which may arise from undefined territorial boundaries, the President of the United States of America, by William Clark, superintendent of Indian affairs, and sole commissioner, specially appointed for that purpose, of the one part, and the undersigned chiefs and head men of the Sock and Fox tribes or nations, fully deputized to act for and in behalf of their said nations, of the other part, have entered into the following articles and conditions, viz:

Art. 1. The Sock and Fox tribes or nations of Indians, by their deputations in council assembled, do hereby agree, in consideration of certain sums of money, &c., to be paid to the said Sock and Fox tribes, by the Government of the United States, as hereafter stipulated, to cede and forever quit claim, and do, in behalf of their said tribes or nations, hereby cede, relinquish, and for ever quit claim, unto the United States, all right, title, interest, and claim, to the lands which the said Sock and Fox tribes have or claim within the limits of the State of Missouri, which are situated, lying, and being between the Mississippi and Mis-

souri rivers, and a line running from the Missouri at the entrance of Kansas river north, one hundred miles to the northeast corner of the State of Missouri, and from thence east to the Mississippi. It being understood, that the small tract of land lying between the rivers Desmoin and the Mississippi, and the section of the above line between the Mississippi and Desmoin, is intended for the use of the half breeds belonging to the Sock and Fox nations, they holding it, however, by the same title and in the same manner that other Indian titles are held.

Art. 2. The chiefs and head men who sign this convention, for themselves and in behalf of their tribes, do acknowledge the lands east and south of the lines described in the first article, so far as the Indians claimed the same, to belong to the United States, and that none of their tribes shall be permitted to settle or to hunt upon any part of it, after the first day of January, 1826, without special permission from the superintendent of Indian affairs.

Art. 3. It is hereby stipulated and agreed, on the part of the United States, as a full consideration for the claims and lands ceded by the Sock and Fox tribes in the first article, there shall be paid to the Sock and Fox nations, within the present year, one thousand dollars in cash or merchandise; and in addition to the annuities stipulated to be paid to the Sock and Fox tribes by a former treaty, the United States do agree to pay to the said Sock tribe, five hundred dollars, and to the Fox tribe five hundred dollars, annually, for the term of ten succeeding years; and at the request of the chiefs of the said Sock and Fox nations, the commissioner agrees to pay to Maurice Blondeau, a half Indian of the Fox tribe, the sum of five hundred dollars, it being a debt due by the said nation to the aforesaid Blondeau, for property taken from him during the late war.

Art. 4. The United States engage to provide and support a blacksmith for the Sock and Fox nations, so long as the President of the United States may think proper, and to furnish the said nations with such farming utensils and cattle, and to employ such persons to aid them in their agriculture, as the President may deem expedient.

Art. 5. The annuities stipulated to be paid by the 3d article are to be paid either in money, merchandise, provisions, or domestic animals, at the option of the aforesaid tribes; and when the said annuities or part thereof *is* paid in merchandise, it is to be delivered to them at the first cost of the goods at St. Louis, free from cost of transportation.

Art. 6. This treaty shall take effect, and be obligatory on the contracting parties, so soon as the same shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof.

In testimony whereof, the said William Clark, commissioner as aforesaid, and the chiefs and head men of the Sock and Fox tribes of Indians as aforesaid, have hereunto set their hands at Washington city, this fourth day of August, in the year of our Lord one thousand eight hundred and twenty-four.

WILLIAM CLARK. [L. S.]

Socks.

Pah-sha-pa-ha, or Stubbs	his x mark	[L. S.]
Kah-koe-kai-maik, or all Fish	his x mark	[L. S.]
Wash-kee-chai, or Crouching Eagle	his x mark	[L. S.]
Kee-o-kuck, or watchful Fox	his x mark	[L. S.]
Kah-kee-kai-maik, or all Fish	his x mark	[L. S.]
Sah-col-o-quoit, or Rising Cloud	his x mark	[L. S.]

Foxes.

Fai-mah, or the Bear	his x mark	[L. S.]
Ka-pol-e-qua, or white nosed Fox	his x mark	[L. S.]
Pea-mash-ka, or the Fox winding his horn	his x mark	[L. S.]
Kee-sheswa, or the Sun	his x mark	[L. S.]

Witnesses at signing.

Thomas L. McKenney, Maurice Blondeau, Law. Taliafero, Indian agent at St. Peters, L. T. Honore, John W. Johnson, G. W. Kennerly, Indian agent, Meriwether Lewis Clark, A. Baronet Vasques, acting S. I. A. and Int., Noal Dashnay.

Also an act of Congress, entitled an act to relinquish the reversionary interest of the United States, in a certain Indian reservation lying between the rivers Mississippi and Desmoines, approved June 30th, 1834, as follows, to wit:

An act of Congress relinquishing the half-breed lands.

(Sec. 1,) *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all the right, title, and interest, which might accrue or revert to the United States, to the reservation of land lying between the rivers Desmones and Mississippi, which was reserved for the use of the half-breeds belonging to the Sac and Fox nations, now used by them, or some of them, under a treaty made and concluded between the United States and the Sac and Fox tribes or nations of Indians, at Washington, on the fourth day of August, in the year one thousand eight hundred and twenty-four, be, and the same are hereby, relinquished, and vested in the said half-breeds of the Sac and Fox tribes or nations of Indians, who, at the passage of this act, are under the reservation in the said treaty entitled by the Indian title to the same, with full power and authority to transfer their portions thereof, by sale, devise, or descent, according to the laws of the State of Missouri.

(Approved, June 30th, 1834.)

And also offered parol testimony to prove, that the northern line of said half-breed reservation was an actually marked line, in accordance with said plat, and called by the neighborhood, along and on each side of said line, the half-breed line; and thereupon prayed the court to instruct the jury as follows, to wit:

Refused.

1st. That if the jury believe from the evidence that the land described in the patent lies within the reservation for the Sac and Fox half-breeds, then the plaintiffs are not entitled to recover under said patent, as authorized by the said act of 1st of July, 1836.

Given.

2d. That under the report of the recorder of land titles, dated February 2d, 1816, offered by plaintiff in evidence, plaintiffs are not entitled to recover, unless the same has been confirmed by an act of Congress.

Given.

3d. That the true construction of the act of 29th of April, 1816, does not confirm the plaintiffs' title to the land sued for in this action, if the Indian title was not then extinguished in said land.

Given.

4th. That the treaty of 1824, with the Sac and Fox Indians, is a recognition by the United States of the Indian title to the land in controversy at the date of said treaty of 1824.

Refused.

5th. That if the jury believe from the evidence that the land described in the patent lies within the reservation for the Sac and Fox half-breeds, then the plaintiffs are not entitled to recover under said patent.

Given.

6th. That if the jury find for the plaintiffs, and that said plaintiffs are entitled to damages from defendants for withholding or using or injuring their property, the jury shall then set off the value of any *permanent* improvements defendants may have made on said land, at their fair value, against said damages.

Refused.

7th. That the plaintiffs cannot recover in this action, unless they show conclusively that the land in controversy is not within the Sac and Fox half-breed reservation.

Given.

8th. Instruct the jury, that when it is proved that the land claimed by Reddick's heirs was within the bounds of the map given in evidence in this case, as a survey of the half-breed tract, and that it has proved that such a line does exist, and is recognised by persons residing on each side of the line as the true north line of said tract, that no repu-

tation or opinion of the citizens residing south of said line, or north of said line, that said line is incorrect, would be evidence to impeach the correctness of the line on the map, and proved to actually exist.

Given.

9th. That if the jury believe that Honore Tesson had no marked or known boundaries, which included the land in controversy, the jury must find for the defendant.

The *first*, *fifth*, and *seventh* of which instructions the court *refused* to give to the jury; to which refusal and opinion of the court the defendants, by their counsel, except, and pray that this their bill of exceptions may be signed, sealed, and made a part of the record.

CHARLES MASON, [SEAL.] *Judge.*

TERRITORY OF IOWA, *Henry county, sct:*

I, Ephraim Killpatrick, clerk of the district court of said county, do hereby certify, that the foregoing 29 pages and nine lines, and maps, contain a true and complete transcript of all the record and proceedings in the case of Edward Brooks and wife, Charles P. Billou and wife, Walter J. and Dabney C. Reddick, heirs at law of Thomas F. Reddick, deceased, against Samuel Marsh, William E. Lee, and Edward C. Delevan, substituted for David W. Kilbourn, in an action of right, as fully as the same appears of record and on file in my office.

In witness whereof, I have hereunto set my hand and affixed the [SEAL.] seal of said court, at Mount Pleasant, in said county, this 23d day of December, in the year of our Lord one thousand eight hundred and forty-three.

E. KILLPATRICK,
Clerk of said court.

Endorsed: Filed in my office, January 1st, 1844.
Test: GEO. S. HAMPTON, *C. S. C.*

And afterwards, to wit, on the 10th day of January, 1844, the said plaintiffs in error filed the following assignment of errors herein, to wit:

Assignment of Errors.

The plaintiffs in error, by their attorney, come and say, that there is error in the record and proceedings in said cause, in this, to wit:

1st. That the court refused to give the *first*, *fifth*, and *seventh* instructions asked by the plaintiffs in error in the court below to the jury, as appears more fully from the third bill of exceptions in the record.

Wherefore they pray, that the judgment in said case may be reversed, &c.

H. T. REID,
Attorney for pltfs. in error.

Joinder in error.

And now come the defendants in error, by their attorney, and say, that neither in the record and process aforesaid, nor in the giving the judgment aforesaid, in any thing is there error, and they pray that the court proceed to examine the matters aforesaid for error assigned.

HENRY W. STARR,
Atty. for defts.

Endorsed: Filed January 10th, 1844.
Test: GEO. S. HAMPTON, *C. S. C.*

And afterwards, to wit, at a supreme court continued and held for Iowa Territory, at the State house in Iowa city, in said territory, on the 10th day of January, A. D. 1844.

Submitted to court.

This day came the parties aforesaid, by their attorneys, and this cause now coming on to be heard, the court took the same under advisement, as per agreement of the attorneys filed herein.

And afterwards, to wit, at a supreme court continued and held as aforesaid, on the 11th day of January, A. D. 1845.

Rule vs. plaintiffs to return the papers to the clerk.

In the above cases, on motion of defendants in error, and by consent of counsel for plaintiffs, it is ordered, that a rule be made on the plaintiffs to return to the clerk the records in the above entitled suits, together with the written arguments of the counsel for the defendants, which are now in possession of counsel by consent, by Thursday next, or in default thereof, that the above suits be dismissed for want of prosecution.

And afterwards, to wit, at a supreme court continued and held as aforesaid, on the 15th day of January, A. D. 1845.

Submitted to the court.

This day this cause came on for hearing, the same on the written argument of counsel is submitted to the court.

And now, at this day, to wit, at a supreme court continued and held as aforesaid, on the 26th day of January, A. D. 1846.

Judgment affirmed.

This day this cause came on for further hearing, and the court being now sufficiently advised in the premises, affirm the judgment of the court below. It is therefore considered by the court, that the judgment of the court below be affirmed, and that a writ of procedendo issue to the court below accordingly; and it is further considered by the court, that the defendants in error recover of the plaintiffs in error the costs herein expended in this court, and that execution issue for the same.

And afterwards, to wit, on the fourth day of February, A. D. 1846, the said plaintiffs in error filed herein the following affidavit and bond, to wit:

tation or opinion of the citizens residing south of said line, or north of said line, that said line is incorrect, would be evidence to impeach the correctness of the line on the map, and proved to actually exist.

Given.

9th. That if the jury believe that Honore Tesson had no marked or known boundaries, which included the land in controversy, the jury must find for the defendant.

The *first*, *fifth*, and *seventh* of which instructions the court *refused* to give to the jury; to which refusal and opinion of the court the defendants, by their counsel, except, and pray that this their bill of exceptions may be signed, sealed, and made a part of the record.

CHARLES MASON, [SEAL.] *Judge.*

TERRITORY OF IOWA, *Henry county, sct:*

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In witness whereof, I have hereunto set my hand and affixed the [SEAL.] seal of said court, at Mount Pleasant, in said county, this 23d day of December, in the year of our Lord one thousand eight hundred and forty-three.

E. KILLPATRICK,
Clerk of said court.

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Wherefore they pray, that the judgment in said case may be reversed, &c.

H. T. REID,
Attorney for plffs. in error.

Joinder in error.

And now come the defendants in error, by their attorney, and say, that neither in the record and process aforesaid, nor in the giving the judgment aforesaid, in any thing is there error, and they pray that the court proceed to examine the matters aforesaid for error assigned.

HENRY W. STARR,
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Judgment affirmed.

This day this cause came on for further hearing, and the court being now sufficiently advised in the premises, affirm the judgment of the court below. It is therefore considered by the court, that the judgment of the court below be affirmed, and that a writ of procedendo issue to the court below accordingly; and it is further considered by the court, that the defendants in error recover of the plaintiffs in error the costs herein expended in this court, and that execution issue for the same.

And afterwards, to wit, on the fourth day of February, A. D. 1846, the said plaintiffs in error filed herein the following affidavit and bond, to wit:

tation or opinion of the citizens residing south of said line, or north of said line, that said line is incorrect, would be evidence to impeach the correctness of the line on the map, and proved to actually exist.

Given.

9th. That if the jury believe that Honore Tesson had no marked or known boundaries, which included the land in controversy, the jury must find for the defendant.

The *first*, *fifth*, and *seventh* of which instructions the court *refused* to give to the jury; to which refusal and opinion of the court the defendants, by their counsel, except, and pray that this their bill of exceptions may be signed, sealed, and made a part of the record.

CHARLES MASON, [SEAL.] *Judge.*

TERRITORY OF IOWA, *Henry county, sct:*

I, Ephraim Killpatrick, clerk of the district court of said county, do hereby certify, that the foregoing 29 pages and nine lines, and maps, contain a true and complete transcript of all the record and proceedings in the case of Edward Brooks and wife, Charles P. Billou and wife, Walter J. and Dabney C. Reddick, heirs at law of Thomas F. Reddick, deceased, against Samuel Marsh, William E. Lee, and Edward C. Delevan, substituted for David W. Kilbourn, in an action of right, as fully as the same appears of record and on file in my office.

In witness whereof, I have hereunto set my hand and affixed the [SEAL.] seal of said court, at Mount Pleasant, in said county, this 23d day of December, in the year of our Lord one thousand eight hundred and forty-three.

E. KILLPATRICK,
Clerk of said court.

Endorsed: Filed in my office, January 1st, 1844.
Test: GEO. S. HAMPTON, *C. S. C.*

And afterwards, to wit, on the 10th day of January, 1844, the said plaintiffs in error filed the following assignment of errors herein, to wit:

Assignment of Errors.

The plaintiffs in error, by their attorney, come and say, that there is error in the record and proceedings in said cause, in this, to wit:

1st. That the court refused to give the *first*, *fifth*, and *seventh* instructions asked by the plaintiffs in error in the court below to the jury, as appears more fully from the third bill of exceptions in the record.

Wherefore they pray, that the judgment in said case may be reversed, &c.

H. T. REID,
Attorney for pltfs. in error.

Joinder in error.

And now come the defendants in error, by their attorney, and say, that neither in the record and process aforesaid, nor in the giving the judgment aforesaid, in any thing is there error, and they pray that the court proceed to examine the matters aforesaid for error assigned.

HENRY W. STARR,
Atty. for defts.

Endorsed: Filed January 10th, 1844.
Test: GEO. S. HAMPTON, *C. S. C.*

And afterwards, to wit, at a supreme court continued and held for Iowa Territory, at the State house in Iowa city, in said territory, on the 10th day of January, A. D. 1844.

Submitted to court.

This day came the parties aforesaid, by their attorneys, and this cause now coming on to be heard, the court took the same under advisement, as per agreement of the attorneys filed herein.

And afterwards, to wit, at a supreme court continued and held as aforesaid, on the 11th day of January, A. D. 1845.

Rule vs. plaintiffs to return the papers to the clerk.

In the above cases, on motion of defendants in error, and by consent of counsel for plaintiffs, it is ordered, that a rule be made on the plaintiffs to return to the clerk the records in the above entitled suits, together with the written arguments of the counsel for the defendants, which are now in possession of counsel by consent, by Thursday next, or in default thereof, that the above suits be dismissed for want of prosecution.

And afterwards, to wit, at a supreme court continued and held as aforesaid, on the 15th day of January, A. D. 1845.

Submitted to the court.

This day this cause came on for hearing, the same on the written argument of counsel is submitted to the court.

And now, at this day, to wit, at a supreme court continued and held as aforesaid, on the 26th day of January, A. D. 1846.

Judgment affirmed.

This day this cause came on for further hearing, and the court being now sufficiently advised in the premises, affirm the judgment of the court below. It is therefore considered by the court, that the judgment of the court below be affirmed, and that a writ of procedendo issue to the court below accordingly; and it is further considered by the court, that the defendants in error recover of the plaintiffs in error the costs herein expended in this court, and that execution issue for the same.

And afterwards, to wit, on the fourth day of February, A. D. 1846, the said plaintiffs in error filed herein the following affidavit and bond, to wit:

Affidavit.

SAMUEL MARSH, William E. Lee, and Edward C. Delevan,
against
EDWARD BROOKS, Virginia C. Brooks, Charles P. Billou, Frances E. Billou, Walter J. Reddick, and Dabney C. Reddick, heirs of Thomas F. Reddick. } In error.

Action of Right.

Personally appeared before me David W. Kilbourn, who being duly sworn deposes and say, that he is the agent of the said Marsh, Lee, and Delevan, above mentioned, and that he verily believes that the value of the property in controversy in the above entitled suit exceeds one thousand dollars.

D. W. KILBOURN.

Sworn and subscribed to before me, this 3d of February, 1846.

J. C. WALKER, *Clerk.*
By J. G. WALKER.

Endorsed: Filed February 4th, 1846.

Test: GEO. S. HAMPTON, *C. S. C.*

Appeal or writ of error bond.

Supreme Court of the United States.

SAMUEL MARSH, William E. Lee, and Edward C. Delevan,
vs.
EDWARD BROOKS, Virginia C. Brooks, Charles P. Billou, Frances E. Billou, Walter J. Reddick, and Dabney C. Reddick, heirs of Thomas F. Reddick. } In error.

Action of Right.

Know all men by these presents, that we, Samuel Marsh, William E. Lee, Edward C. Delevan, and David W. Kilbourn, and Edward Kilbourn, are held and firmly bound unto the above named defendants in error in the sum of one thousand dollars, to be paid to the said defendants in error, their executors or administrators; to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this second day of February, A. D. 1846.

Whereas the above named Marsh, Lee, and Delevan, have prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit by the supreme court of the territory of Iowa. Now, therefore, the condition of this

obligation is such, that if the above named Marsh, Lee, and Delevan, shall prosecute their said writ of error to effect, and answer all damages and costs, if they shall fail to make good their plea, then this obligation to be void, otherwise the same shall be and remain in full force and virtue.

SAMUEL MARSH, [SEAL.]
By D. W. Kilbourne, his attorney in fact.
WILLIAM E. LEE, [SEAL.]
By D. W. Kilbourne, his attorney in fact.
EDWARD C. DELEVAN, [SEAL.]
By D. W. Kilbourne, his attorney in fact.
D. W. KILBOURNE, [SEAL.]
EDWARD KILBOURNE. [SEAL.]

Sealed in presence of—
H. W. KILBOURNE.

I hereby approve the above bond and the securities thereto.
CHARLES MASON, *Chief justice supreme court, Iowa Territory.*

Endorsed: Filed February 4th, 1846.

Test: GEO. S. HAMPTON, *C. S. C.*

UNITED STATES OF AMERICA,
Territory of Iowa, ss:

I, George S. Hampton, clerk of the supreme court for Iowa territory do hereby certify, that the foregoing pages hereto attached, contain a full, true, and complete transcript of the record and proceedings had between the parties therein named, as full, true, and complete, as the same remains of record and on file in my office.

In testimony whereof, I have hereunto set my name and affixed the [SEAL.] seal of the said supreme court; done at Iowa city, this 11th day of July, A. D. 1846.

GEO. S. HAMPTON, *Clerk of the supreme court, Iowa Territory.*

Writ of error.

Fee for copy, transcript - -	$14 22
Certificate and seal to same - -	50
Certificate and seal to writ of error -	50
	$15 22

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges of the supreme court of the Territory of Iowa, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea, which is in the said supreme court before you,

between Samuel Marsh, William E. Lee, and Edward C. Delevan, plaintiffs, and Edward Brooks, Virginia C. Brooks, his wife, Charles P. Billou and Frances E. Billou, his wife, Walter J. Reddick, and Dabney C. Reddick, heirs of Thomas F. Reddick, deceased, are defendants, a manifest error, hath happened to the great damage of the said Marsh, Lee, and Delevan, as by their complaint appears; and it being fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington city on the first Monday of December next, in the said Supreme court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 4th day of February, A. D. 1846.

[SEAL.]

GEO. S. HAMPTON, *Clerk of the supreme court, Iowa Territory.*

UNITED STATES OF AMERICA,
Territory of Iowa, ss:

In obedience to the command of the within writ, I hereby attach a copy of the transcript of the record and proceedings had in the cause within named, for the Supreme Court of the United States.

In witness whereof I have hereunto set my name and affixed the seal of the said supreme court of Iowa territory, this 11th day of July, A. D. 1846.

[SEAL.]

GEO. S. HAMPTON, *Clerk of the supreme court, I. T.*

A true copy of the within writ of error was deposited with me for the defendants in error, February 4th, 1846.

Test: GEO. S. HAMPTON, *C. S. C.*

UNITED STATES OF AMERICA, *ss:*

To Edward Brooks and Virginia C. Brooks, his wife, Charles P. Billou and Frances E. Billou, his wife, Walter J. Reddick, and Dabney C. Reddick, co-heirs of Thomas F. Reddick, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the Territory of Iowa, wherein Samuel Marsh, William E. Lee, and Edward C. Delevan, are plaintiffs, and you are defendants in error; to show cause, if any there be,

why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Charles Mason, chief justice of the said supreme court of the Territory of Iowa, this 4th day of February, A. D. 1846.

CHARLES MASON, *Chief justice of the supreme court of the Territory of Iowa.*

I hereby acknowledge that the citation, of which the within is a copy, was duly served on me as the attorney for the defendants in error in the case therein named.

HENRY W. STARR,
Attorney for defendants.

Feb. 4th, 1846, Iowa city, I. T.

Assignment of errors.

SAMUEL MARSH, William E. Lee, and Edward C. Delevan,
vs.
EDWARD BROOKS, Virginia C. Brooks, Charles P. Billou, Frances E. Billou, Walter J. Reddick, and Dabney C. Reddick, heirs of Thomas F. Reddick. } In error.

Action of Right.

And the said Samuel Marsh, William E. Lee, and Edward C. Delevan, now come and say, that in the record and proceedings aforesaid there is *error*, in this, to wit:

1st. That the supreme court of the Territory of Iowa affirmed the judgment of the district court in this case.

2d. That said judgment was given in favor of the said Edward Brooks, Virginia C. Brooks, Charles P. Billou, Frances E. Billou, Walter J. Reddick, and Dabney C. Reddick, by the said supreme court of Iowa, when by the laws of the land it ought to have been given in favor of the said Marsh, Lee, and Delevan.

Wherefore the said Marsh, Lee, and Delevan, pray that the said judgment may be reversed, &c.

REID & JOHNSTON,
Attys. for plffs. in error.

Filed 18th December, 1846.